



STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. BOX 3378
HONOLULU, HAWAII 96801-3378

In reply, please refer to:
EMD / CWB

10017CDCL.04b

October 6, 2004

Mr. William S. Devick, Administrator
State of Hawaii Department of Land
and Natural Resources
Division of Aquatic Resources
1151 Punchbowl Street, Room 330
Honolulu, Hawaii 96813

Dear Mr. Devick:

**Subject: Section 401 Water Quality Certification (WQC) for the
Artificial Reef Development at Five Existing Sites off the Islands of Oahu and Maui,
WQC 0000154a/Army File No. 200400154**

In accordance with the provisions of the Clean Water Act, as amended (33 U.S.C. 1251 et seq.; the "CWA"), Chapters 91, 92 and 342D, Hawaii Revised Statutes (HRS), Part 121 of Title 40, Code of Federal Regulations (CFR), and Chapter 11-54 of the Hawaii Administrative Rules (HAR), the Department of Health (Department) has reviewed your Section 401 Water Quality Certification (WQC) application and appurtenant data relevant to water quality considerations for the subject proposed construction activities. The discharge activities associated with the construction of the subject project will be authorized under the U.S. Department of the Army (DA), Honolulu Engineer District (HED) Individual Permit (IP, File No. 200400154) under Section 404 of the CWA and Section 10 of the Rivers and Harbors Act (RHA) of 1899. The processing of this Section 401 WQC application is based on requirements contained in CWA, Section 401; HRS, Chapters 91, 92, and 342D; 40 CFR Part 121; and HAR, Chapter 11-54.

The following is the information of the applicant and the agent:

Applicant: Division of Aquatic Resources (DAR)/Department of Land & Natural Resources(DLNR),
1151 Punchbowl Street, Room 330
Honolulu, Hawaii 96813

Contact: Mr. William S. Devick, Administrator
Ph. (808) 587-0100

The Director of Health (Director) attests to the following statements based on information contained in the Section 401 WQC application package.

1. The Director has either:
 - a. Examined the application submitted by the applicant and bases its certification upon an evaluation of the information contained in such application which is relevant to water quality considerations; or
 - b. Examined other information furnished by the applicant sufficient to permit the statement described in Item No. 2. below.
2. Based on an evaluation of the Section 401 WQC application, the supporting information, which are relevant to water quality considerations, and when all requirements and conditions contained in this proposed Section 401 WQC are fully complied with, there is reasonable assurance that the discharges resulting from the proposed construction activities will be conducted in a manner which will not violate the applicable water quality standards and will comply with the applicable provisions of CWA, Sections 301, 302, 303, 306, and 307.
3. The following conditions are deemed necessary and shall be imposed with respect to the project construction related discharge activities to be authorized under DA IP File No. 200400154 to be issued under the authorization of CWA, Section 404 and RHA, Section 10.
 - a. The discharge activity that the applicant is seeking coverage under this Section 401 WQC application consists of continuing artificial reef maintenance and expansion activities at five (5) artificial reef sites off the islands of Oahu and Maui. The locations, boundaries, and sizes of the artificial reef sites are as follows:

| <u>LOCATIONS</u> | <u>BOUNDED BY</u> | <u>ACREAGE</u> | <u>YEAR CONSTRUCTED</u> |
|---------------------|--|----------------|-----------------------------|
| Ewa Beach (Oahu) | A. 21°16'49"N, 158°01'21"W B. 21°16'56"N, 158°01'07"W C. 21°16'41"N, 158°01'17"W D. 21°16'49"N, 158°01'03"W | 31 acres | 1986 |
| Kualoa (Oahu) | A. 21°34'42"N, 157°51'09"W B. 21°35'04"N, 157°50'26"W C. 21°31'42"N, 157°48'56"W D. 21°31'54"N, 157°48'24"W | 1,727 acres | 1972 |

| <u>LOCATIONS</u> | <u>BOUNDED BY</u> | <u>ACREAGE</u> | <u>YEAR CONSTRUCTED</u> |
|------------------------|--|----------------|-----------------------------|
| Maunalua Bay (Oahu) | A. 21°14'58"N, 157°46'34"W B. 21°15'14"N, 157°46'03"W C. 21°15'06"N, 157°45'58"W D. 21°14'50"N, 157°46'29"W | 74 acres | 1961 |
| Waianae (Oahu) | A. 21°25'35"N, 158°11'58"W B. 21°25'36"N, 158°11'45"W C. 21°24'48"N, 158°11'54"W D. 21°24'48"N, 158°11'40"W | 141 acres | 1963 |
| Keawakapu (Maui) | A. 20°41'18"N, 156°27'36"W B. 20°42'18"N, 156°27'30"W C. 20°41'48"N, 156°27'18"W D. 20°41'48"N, 156°27'12"W | 52 acres | 1962 |

- b. Materials to be temporarily or permanently placed into the designated sites off the Islands of Oahu and Maui identified under this Section 401 WQC application include contaminant free vessels, surplus concrete material, and other appropriate material approved by the Director.
- c. This Section 401 WQC:
 - (1) Will take effect on the date of this Section 401 WQC.
 - (2) Shall expire five (5) years from the issuance date of this Section 401 WQC, or until the applicable water quality standards (WQS) are revised or modified, or when the project construction is completed, or when the DA IP (File No. 200400154) expires, whichever is earliest. If the applicable State WQS is revised or modified during the five-year period and the discharge activity complies with the revisions or modifications, this Section 401 WQC shall continue to be valid for the remainder of the five-year period.
 - (3) May be revoked when any of the following is identified:
 - (a) The DLNR shall comply with all applicable new water quality standards as adopted by the Department. In any case where:
 - (i) Water quality standards applicable to the waters into which the activity may discharge are subsequently established before the activity is completed; or

- (ii) The Director determines that the activity is violating new water quality standards.

The Department's Clean Water Branch (CWB) will notify the DLNR of the violation. The DLNR shall cease the violation within 180 days of the date of the notice. If the DLNR fails within 180 days of the date of the notice to cease the violation, the Director may revoke this certification; and

- (b) The Director determines that the discharge(s) from the activity is violating existing water quality standards or condition of this Section 401 WQC. The CWB shall notify the DLNR of the violation. The DLNR shall cease the violation within seven (7) days of the date of the notice. If the DLNR failed within seven (7) days of the date of the notice to cease the violation, the Director may revoke this certification.

These actions shall not preclude the Director from taking other enforcement action authorized by law.

Written notification by the CWB under this section is complete upon mailing or sending a facsimile transmission of the document or actual receipt of the document by DLNR.

d. The DLNR shall:

- (1) Comply and shall also require the contractor(s) to comply with applicable specifications, schedules, procedures, pollution control/ treatment measures plan, and any other project construction related requirements, information contained in the Section 401 WQC application, dated February 6, 2004 and the April 15, 2004 and May 25, 2004 revisions.
- (2) Comply with the Best Management Practices and the "Applicable Monitoring and Assessment Plan" contained in the February 6, 2004 Section 401 WQC application and the April 15, 2004 and May 25, 2004 revisions acceptable to the Director.
- (3) Ensure that all "discharges" associated with the proposed construction activities are conducted in a manner that will comply with "Basic Water Quality Criteria Applicable to All Waters" as specified in HAR, Section 11-54-04.
- (4) Ensure that all material(s) placed or to be placed in State waters are free of waste metal products, organic materials, debris and any pollutants at toxic or potentially hazardous concentrations to aquatic life as specified in HAR, Section 11-54-04(b).
- (5) Ensure that construction debris is contained and prevented from entering or reentering State waters.

- (6) Immediately cease the portion of the construction work if water quality monitoring or daily inspection or observation result(s) indicates that noncompliance to HAR, Section 11-54-04(a) or Section 11-54-04(b) will occur or is occurring. The construction activity shall not resume until adequate mitigative measures are implemented and appropriate corrective actions are taken and concurred with by the Department. The DLNR shall not hold the Department responsible for any damages or costs incurred due to the cease of the construction works.
 - (7) Immediately report to the CWB of any spill(s) or other contamination(s) that occurs at the project site.
 - (8) Ensure that all materials to be used to construct the artificial reefs are inspected by representative of the U.S. Coast Guard (USCG), DLNR, or the Department. No hazardous material shall be allowed for the artificial reef construction;
- e. The DLNR shall submit the following information to the CWB:
- (1) A commencement of work notification letter not later than two (2) weeks prior to the commencement date of each artificial reef placement activity. Such notification shall include:
 - (a) the material(s) to be placed, the quantity; and
 - (b) the location, commencement date, and termination date of the permitted artificial reef placement activity.
 - (2) The DLNR shall conduct visual water quality monitoring each time during and immediately after the deployment of the artificial reef construction materials. The results shall be documented by photograph/video. Two (2) copies of the water quality monitoring photographs taken each time during and immediately after deployment of the artificial reef construction materials. The copies shall be submitted not later than two (2) weeks after conducting such a visual monitoring. Videos shall be submitted to the CWB when requested.
 - (3) In addition, any changes in monitoring location, frequency, dates or methods or corrections to data already on file with the Department shall be submitted as such changes or corrections arise.

- f. The DLNR shall review and update the effectiveness and adequacy of the applicable "Water Quality Monitoring and Assessment Plan", the implemented site-specific best management practices, and/or other environmental protection measures and subsequent revisions. The DLNR shall modify the applicable monitoring and assessment plan, and site-specific BMPs and/or environmental protection measures upon request or when instructed by the Director.

Any change(s) to the implemented site-specific BMPs measures, applicable monitoring and assessment plan or correction(s) or modification(s) to information already on file with the Department shall be submitted to the CWB, for review and comment, as such change(s), correction(s) or modification(s) arise. The DLNR shall properly address all comment(s) and/or concern(s) to the Director's satisfaction before such change(s), correction(s) or modification(s) become effective.

- g. By applying for and accepting this Section 401 WQC, the DLNR agrees that the Department may conduct routine inspection of the construction site, taking color photographs, and to sample any discharges or effluent in accordance with HRS, Section 342D-8.
- h. There shall be no discharge of any wash water into State waters.

Please include File No. **WQC 0000154a** and the following certification in all future correspondences with the Department regarding the subject project:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Failure to provide the File No. **WQC 0000154a** assigned to this project in any future correspondence or inquiry may be a basis to delay the processing of your correspondence.

Should you have any questions, please contact Mr. Darryl Lum of the Engineering Section, CWB, at (808) 586-4309.

Mr. William S. Devick
October 6, 2004
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Sincerely,

THOMAS E. ARIZUMI, P.E., CHIEF
Environmental Management Division

DCL:cu

c: Regulatory Branch, HED/COE
PICO, Region 9/EPA
CWRM/DLNR
CZM Program, Office of Planning/DBEDT
OSWM/DOH
Mr. Brian Kanenaka, DLNR, Division of Aquatic Resources